

¹ The appellate cases which discuss the so-called secondary injury rule appear to use the phrases “direct and natural consequence” and “natural and probable consequence” interchangeably.

(2) respondent satisfied its burden of proving that an intervening accident occurred on May 26, 2009; (3) claimant was not permanently and totally disabled because the opinions of the witnesses whose testimony supported permanent total disability were based on both claimant's hip injury and claimant's subsequent back injury; (4) claimant sustained a 20% whole body functional impairment; (5) claimant had an 87.5% work disability based upon a 75% task loss and a 100% wage loss; and (6) there was an overpayment of temporary total disability benefits. The SALJ awarded permanent partial disability benefits based on the finding of an 87.5% work disability.

Claimant argues he is essentially and realistically unemployable and that the Board should reverse the award and find him permanently totally disabled. Claimant contends that the May 26, 2009, injury was the direct and natural consequence of the injury on May 12, 2006.

Respondent requests the Board affirm the award. Respondent asserts claimant failed to satisfy his burden of proving that the May 26, 2009, injury was the natural and probable consequence of the May 12, 2006, injury. Accordingly, respondent maintains it met its burden of proving an intervening accidental injury.

The issues before the Board in this appeal are:

- (1) The nature and extent of claimant's disability.
- (2) Whether claimant's low back injury on May 26, 2009, was a separate, intervening injury or a natural and probable consequence of the May 12, 2006, injury.
- (3) Whether claimant received an overpayment of temporary total disability benefits.

FINDINGS OF FACT

After reviewing the entire record and considering the parties' arguments, the Board finds:

Claimant was age 49 when he testified at the March 23, 2011, regular hearing. He commenced employment for respondent in 2005 or 2006 and, at the time of his accident, his job for respondent was drywall installer and working foreman. Over the course of claimant's adult life he worked in the drywall business for a number of employers as an installer, finisher, and working foreman. Claimant completed the tenth grade and thereafter earned his GED. He completed 49 credit hours at Cowley County Community College but did not receive an associate's degree. He has no other formal classroom education.

Claimant sustained a compensable personal injury by accident on May 12, 2006, when he fell off a scaffold. He landed on a concrete surface and sustained a fracture at the femoral neck and injuries to his right hip and low back. Claimant was transported by

ambulance to St. Francis Hospital, where Dr. J. Stanley Jones, an orthopedic specialist on call, performed surgery on May 12, 2006, consisting of an open reduction, percutaneous pin fixation, and aspiration of the right hip. In addition to his symptoms in the right hip, claimant experienced spasms in his groin and right thigh and discomfort in his low back.

On May 18, 2006, claimant underwent an MRI scan of his lumbar spine. It revealed diffuse disc bulging at L4-L5 with disc space narrowing at that level and a small central disc bulge at L2-L3.² The scan revealed no evidence of nerve root impingement or spinal stenosis at any lumbar level.

An EMG/NCV study of the right lower extremity was conducted on December 14, 2006, which was within normal limits.

Claimant underwent a second right hip surgery by Dr. Jones on July 26, 2007, in which the screws previously implanted were removed, with ignite bone grafting and placement of four new screws.

Ultimately, due to continuing severe right hip pain, claimant initiated treatment with orthopedic surgeon Dr. Robert P. Cusick. Claimant's first appointment with Dr. Cusick was on August 26, 2008. Dr. Cusick's diagnosis was nonunion of the femoral neck fracture. Dr. Cusick performed claimant's third right hip surgery on September 11, 2008, consisting of a right total hip arthroplasty. Claimant improved following the hip replacement.

On May 26, 2009, claimant fell in a parking lot, the precise location of which is unclear in the record. The accident did not occur at work. According to claimant his right leg "gave out."³ Claimant described the parking lot incident as follows:

I was walking, walking to my car, but I had been experiencing pain in the rod in the leg and every once in awhile, and I don't know if it was the bone or the nerve, it would just send a sharp pain and the leg would give out. So the leg gave out. And I started to fall and I reached trying to break my fall, and I reached for something and I twisted and I fell. And that's when I landed down and that's when my back started hurting (indicating).⁴

As the result of the May 2009 fall, claimant noticed significant pain in his low back. He called Dr. Cusick's office and was instructed to go to the ER, have some x-rays taken,

² The May 18, 2006, lumbar MRI scan also revealed evidence of a previous laminectomy at L4-L5, which claimant underwent in approximately 1994. Claimant testified he also received surgical treatment to his cervical spine in 2000.

³ R.H. Trans. at 24.

⁴ *Id.*, at 32.

and request pain medication until claimant could get in to see Dr. Cusick.⁵ Claimant returned to Dr. Cusick's office on June 2, 2009, and was seen by physician assistant Jack Hall. Claimant provided the following history:

The patient presents status post right total hip arthroplasty on 09/11/2008. He states he has been experiencing some right leg pain. He states he fell, and on 05/26/2009 he saw Dr. Cusick in the emergency room. He thought things would be better. He is still continuing to have significant pain in and around his low back.⁶

X-rays of the right hip taken at Dr. Cusick's office on February 24, 2009, and again on June 2, 2009, showed no disruption or other abnormality with claimant's prosthetic hip. At the February 24, 2009, office visit, Mr. Hall notes:

The patient walks with a slight antalgic gait favoring his right lower extremity. The incision about his right hip is well healed. No signs of infection or drainage. He has acceptable range of motion of his hip. He is able to flex his hip against resistance. He is neurovascularly intact right lower extremity.⁷

Dr. Cusick ordered another MRI scan of the lumbar spine, which was conducted on June 2, 2009. That test showed, in addition to the degenerative changes revealed in the prior lumbar MRI scan, an L2-L3 right paramedian disc protrusion with fairly significant effacement of the right ventral lateral spinal canal and neural foramina. Dr. Cusick referred claimant to Dr. M. Camden Whitaker, a spine surgeon. A patient registration form apparently completed by claimant on June 8, 2009, states the reason for seeing Dr. Whitaker is "back & leg injury due to fall cause of hip."⁸ Dr. Whitaker's diagnostic impressions were lumbar disc displacement at L2-L3 with lumbar spinal stenosis. On June 16, 2009, Dr. Whitaker performed a laminectomy at L3 with discectomy and foraminotomy on the right at L2-L3.

Dr. Cusick released claimant at maximum medical improvement (MMI) regarding the right hip on January 19, 2010, at which time the doctor indicates claimant was doing well. On that date Dr. Cusick recorded no complaints from claimant related to his low back. Dr. Whitaker released claimant at MMI regarding the low back on September 1, 2010. Claimant has engaged in no gainful employment since the May 12, 2006, accident.

Regarding the cause of claimant's May 26, 2009, fall, Dr. Cusick's testimony is best described by quoting his answers to questions at his evidentiary deposition:

⁵ There is evidence that Dr. Cusick saw claimant in the emergency room.

⁶ Cusick Depo., Ex. 2.

⁷ *Id.*

⁸ *Id.*, Ex. 4.

Q. (Mr. Vernon) And, Doctor, prior to seeing Mr. Roberson on June 2, 2009, had he provided to you a history of leg weakness or falling previously?

A. (Dr. Cusick) He did have a small amount of weakness prior exhibited by his Trendelenburg gait, but on June 2nd it looked like his weakness had increased and the low back pain was new.

Q. And with regard to the weakness, did you associate that with the fall or the incident of May 26, 2009?

A. It seemed to me that the fall likely increased his weakness.

Q. And prior to your visit of June 2, 2009 with Mr. Roberson, had he actually expressed to you that he was having problems falling due to the weakness?

A. I don't recall.

Q. Had he expressed those to you, would you have noted that in your reports?

A. Probably.

Q. So with regards to the significant increase in low back pain and the increase in leg pain, did you find those to be new complaints or new symptoms?

A. Yes.

Q. And again, did you associate those with the incident of May 26, 2009?

A. Yes.

Q. As such, did you associate those with a new accident or a new injury?

A. Yes.⁹

. . . .

Q. (Mr. Slape) Here's my question because what I'm trying to do, Doctor, is figure out whether or not -- assuming that this gentleman's testimony is correct, and I'm asking you to hypothetically make that assumption that his leg gave out.

A. (Dr. Cusick) Okay.

Q. I'm trying to determine from you whether you have an opinion to a reasonable medical probability on whether or not his leg giving out as he described and assuming that's correct was the natural consequence of his original hip injury in

⁹ *Id.*, at 11-12.

2006, therefore tying it into that 2006 injury, and the original injury as well as any subsequent surgeries that were performed, of course, on that hip.

A. I'll do my best to answer that.

Q. If you would, please.

A. Had he not had an injury in 2006, it's unlikely he would have had a hip replacement and two prior surgeries and had any problems with his hip to begin with. He had findings on the MRI that was done in June of '09 which led him to end up with the spine surgery. It would be very, very uncommon for a hip replacement to give out or to create that type of pain, but like I mentioned earlier, he was progressing a little bit slowly and he did have a fair bit of pain following his surgery that other people don't have, but the other possibility is that the findings on the MRI weren't all very acute and he may have had some low back issues prior to his fall which would lead to the weakness and falling. So I know that's a vague answer, but I don't know that I can give you a great answer to that question. In my opinion if he hadn't had an injury in '06, anyone could fall down any time but I don't know that his leg would have any reason to give out when it did.

Q. So given the initial injury and the chain of events thereafter, is it more probably true than not that the leg giving out was a natural consequence and flow of the 2006 injury? And more probably true than not is not a mathematical certainty. It's basically 51 percent or more probably true than not, if you can.

MR. VERNON: If you can. Objection, asked and answered. I believe you've already answered the question to the best of your ability, but you may go ahead and elaborate some more, Doctor.

A. I would suggest that his leg gave out more likely as a result of the series of events he went through than it would have if he hadn't been through that series of events.¹⁰

. . . .

Q. (Mr. Vernon) Since Mr. Roberson up to or immediately preceding June 2, 2009 had not reported to you problems with his leg giving out causing him to fall, is there anything to lead you to believe that the incident of May 26, 2009 caused him to fall?

A. (Dr. Cusick) Can you repeat that? I'm sorry.

Q. Because Mr. Roberson didn't provide to you a history of his leg giving out causing to him *[sic]* fall at any time prior to June 2, 2009, does that require you to only guess or speculate with regards to whether the incident or the accident of May 26, 2009 was the result of allegedly his leg giving out and falling?

¹⁰ *Id.*, at 17-19.

MR. SLAPE: Let me object to the form of the question. The doctor has not indicated the gentleman did not tell him that. He has only indicated that it is not recorded in his chart notes.

A. So since he hadn't given me any history prior, yes, I would be speculating, and I can further say that a leg giving out after a total hip is a bit unusual.¹¹

Hence, Dr. Cusick denied that claimant complained of his right leg giving out before May 26, 2009. Claimant did not complain of right leg pain when he was seen in Dr. Cusick's office on February 24, 2009. When claimant was seen in Dr. Cusick's office on June 2, 2009, claimant did not provide a history that his right leg gave out, causing him to fall. However, as noted previously, claimant did tell Dr. Cusick's physician assistant that he had been experiencing right leg pain and fell on May 26, 2009.

Dr. Cusick provided no opinions regarding permanent functional impairment, work restrictions, or task loss.

Dr. Whitaker testified that he first saw claimant on June 8, 2009. Claimant complained of low back and right lower extremity pain. The history claimant provided to Dr. Whitaker was that he was doing quite well until he was involved in a recent incident in which he developed low back and right lower extremity pain. Dr. Whitaker did not think the back and leg pain were caused by the 2006 accident. Claimant provided nothing to Dr. Whitaker which would provide him with a reason to associate claimant's low back and leg symptoms with anything other than the May 26, 2009, event. Dr. Whitaker also testified that he has no opinion whether the 2009 incident was related to the 2006 incident. Dr. Whitaker did not testify about the reference in the June 8, 2009, patient registration form, which indicated that the reason claimant was seeing Dr. Whitaker was "back & leg injury due to fall cause of hip."¹²

Dr. Whitaker had no opinions regarding claimant's permanent functional impairment, permanent restrictions, or task loss.

Dr. Paul S. Stein is a board-certified neurosurgeon. He evaluated claimant at respondent's request on January 22, 2010. Claimant's chief complaints were lower back and right hip pain. Claimant provided no history to Dr. Stein about his fall and low back injury in a parking lot on May 26, 2009. Dr. Stein expressed opinions regarding permanent functional impairment pursuant to the *AMA Guides*.¹³ (1) regarding the low back, there was

¹¹ *Id.*, at 21-22.

¹² *Id.*, Ex. 4.

¹³ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

a 4% whole body impairment; and (2) regarding the right hip, there was a 20% whole body impairment. Dr. Stein combined the back and hip ratings for a total of 23% functional impairment to the body as a whole. Dr. Stein stated in his first narrative report that his rating of the low back “is being done on the assumption that there is a causal relationship between the work injury and the surgery by Dr. Whitaker.”¹⁴ Dr. Stein’s report reflects that he did review medical records as part of his evaluation; however, there is no reference to the May 26, 2009, fall in the report or in Dr. Stein’s testimony.

Dr. Stein imposed permanent restrictions and in so doing considered both the right hip and the low back. Dr. Stein reviewed the list of twelve work tasks prepared by vocational consultant Steve Benjamin. Dr. Stein concluded that claimant could no longer perform nine of the twelve, for a 75% task loss.

Dr. Pedro A. Murati is board certified in physical medicine and rehabilitation and as an independent medical examiner. On March 8, 2010, Dr. Murati examined claimant at the request of claimant’s counsel. Dr. Murati concluded that claimant, under the *AMA Guides*, sustained a 15% whole body functional impairment for the lumbar spine injury and a 20% whole body functional impairment for the right hip injury. Dr. Murati combined the spine and hip impairments for an aggregate permanent impairment of 32% to the whole body.

Dr. Murati opined that claimant’s back and hip diagnoses are “a direct result from the work-related injury that occurred on 5-12-06.”¹⁵ However, there is no indication that Dr. Murati was told about or considered claimant’s low back injury in May 2009. Dr. Murati’s report indicates that he reviewed some medical records as part of his evaluation; however, there is no mention in Dr. Murati’s report or his testimony of the May 26, 2009, event.

Dr. Murati imposed stringent permanent physical restrictions and expressed the opinion that claimant is permanently totally disabled. In Dr. Murati’s opinion, claimant is essentially and realistically unemployable. Dr. Murati, in arriving at his opinions, considered both the hip and the low back.

Three vocational consultants testified. Steve Benjamin prepared a list of work tasks performed by claimant in the fifteen years preceding the May 12, 2006, accident. Mr. Benjamin concluded that claimant “should be able to return to the open labor market”¹⁶ and earn weekly wages in the \$290.00 to \$346.00 range.

Jerry D. Hardin also prepared a task list for the relevant fifteen-year period. However, no physician testified to claimant’s task loss based on the tasks identified and

¹⁴ Stein Depo., Ex. 2 at 4.

¹⁵ Murati Depo. at 15.

¹⁶ Benjamin Depo. at 11.

described by Mr. Hardin. Mr. Hardin concluded that claimant was, based on the restrictions of Dr. Murati only, essentially and realistically unemployable and permanently totally disabled. Karen Crist Terrill, the third vocational consultant to testify, concluded based on the restrictions of Dr. Stein and Dr. Murati that claimant is unable to engage in any type of substantial and gainful employment and is permanently totally disabled.

PRINCIPLES OF LAW

K.S.A. 2005 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends."

K.S.A. 2005 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence.¹⁷

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*,¹⁸ the Court held:

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury. (Syllabus 1).

But the *Jackson* rule does not apply to new and separate accidental injuries. In *Stockman*,¹⁹ the Court attempted to clarify the rule:

The rule in *Jackson* is limited to the results of one accidental injury. The rule was not intended to apply to a new and separate accidental injury such as occurred in the instant case. The rule in *Jackson* would apply to a situation where a claimant's

¹⁷ *Box v. Cessna Aircraft Company*, 236 Kan. 237, 689 P.2d 871 (1984).

¹⁸ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972). See also *Logsdon v. Boeing Company*, 35 Kan. App. 2d 79, Syl. ¶¶ 1, 2, 3, 128 P.3d 430 (2006).

¹⁹ *Stockman v. Goodyear Tire & Rubber Co.*, 211 Kan. 260, 263, 505 P.2d 697 (1973).

disability gradually increased from a primary accidental injury, but not when the increased disability resulted from a new and separate accident.

ANALYSIS

The Board is persuaded that the SALJ correctly found that claimant's May 26, 2009, low back injury was not the natural and probable consequence of the May 12, 2006, injury.

The preponderance of the credible evidence renders improbable claimant's testimony regarding the May 26, 2009, event. Claimant said that he had been experiencing right leg pain and episodes of his right leg giving out. On May 26, 2009, claimant alleges that he sustained just such an episode, which caused him to fall and injure his low back. However, the claimant's visit to Dr. Cusick's office on February 24, 2009, does not document any complaints of pain or instability in the right leg. On the contrary, claimant declared he was "doing well."²⁰ X-rays of the right hip showed nothing which would suggest a problem with the claimant's prosthetic hip or the post-surgical healing process.

Dr. Cusick's testimony to some extent conflicts with itself, but clearly Dr. Cusick, the surgeon who performed the right total hip arthroplasty, was of the opinion that it would be either unusual or very uncommon for the claimant to experience the pain and giving way he described. Dr. Cusick saw no reason for claimant's leg to give out as alleged by claimant. Dr. Cusick concluded that, given the lack of any history of claimant's right leg giving out before May 26, 2009, he would have to speculate to conclude that the May 2009 injury resulted from claimant's leg giving way.

Although Dr. Whitaker testified that he had no opinion regarding the relationship between the May 2006 event and the May 2009 event, he did testify that claimant provided him with no information from which Dr. Whitaker could associate claimant's low back and right leg symptoms with anything other than the 2009 accident. The testimonies of Dr. Stein and Dr. Murati cast further doubt on claimant's position. Claimant told neither Dr. Stein nor Dr. Murati about the May 26, 2009, fall and the circumstances regarding its occurrence. Dr. Stein testified that he was assuming the claimant's low back surgery resulted from the 2006 accident. Neither Dr. Stein nor Dr. Murati expressed opinions that would support the notion that claimant's 2009 accidental injury was the direct and natural consequence of the 2006 accidental injury.

Claimant's functional impairment should be limited to the right hip. Although there is evidence that claimant sustained some low back symptoms following the 2006 fall from the scaffolding, it does not appear from the record that he received any significant treatment for the low back until after the May 26, 2009, accident. Claimant did undergo a

²⁰ Cusick Depo., Ex. 2.

lumbar MRI scan in May 2006 and an EMG/NCV in December 2006. Those studies showed a disc bulge at L2-L3 but no evidence of disc herniation or radicular involvement. However, the lumbar MRI scan conducted shortly following the fall in the parking lot showed a disc herniation at L2-L3 causing neurological compromise and the need for surgical treatment. There is no evidence which establishes that claimant sustained any permanent functional impairment or task loss resulting from any low back injury sustained from the 2006 injury.

The only ratings to the hip come from Dr. Stein and Dr. Murati, who agree that under the AMA *Guides* claimant sustained a 20% whole body functional impairment regarding the right hip. The SALJ correctly determined claimant's functional impairment was 20% to the body as a whole.

The Board is also persuaded that the SALJ was correct in finding that claimant did not sustain his burden of proving that he suffered from a permanent total disability as a result of the May 12, 2006, accident. All of the expert witnesses whose testimony suggests that claimant is essentially and realistically unemployable and is permanently totally disabled (Dr. Murati, Ms. Terrill, and Mr. Hardin) considered claimant's low back as well as the right hip. Dr. Murati and Dr. Stein do not delineate which of their restrictions relate to the hip and which of their restrictions relate to the back. In expressing their opinions regarding claimant's employability, Ms. Terrill and Mr. Hardin rely on the physical restrictions of Dr. Stein, Dr. Murati, or both.

The SALJ awarded work disability based on a task loss of 75%, which was Dr. Stein's opinion utilizing Steve Benjamin's task list. However, Dr. Stein's opinion regarding task loss is not limited to the task loss, if any, resulting from the hip injury. Dr. Stein also considered the low back injury, which resulted from a new and separate accident on May 26, 2009. Since Dr. Stein's task loss opinion is the only such opinion contained in the record, the Board concludes that claimant has not sustained his burden of proving that any task loss resulted from the 2006 injury.

The Board, therefore, finds that claimant's work disability should be reduced from 87.5% to 50% (100% wage loss + 0% task loss \div 2 = 50% work disability).

The Award finds that claimant is entitled to temporary total disability benefits (TTD) at the rate of \$430.36²¹ from May 12, 2006, through February 24, 2009, the date the SALJ found claimant was released at maximum medical improvement by Dr. Cusick, totaling \$62,462.45. Respondent had paid TTD for 196.69 weeks at the rate of \$426.69 per week, from May 13, 2006, through February 8, 2010, totaling \$83,916.44. The SALJ's Order Nunc Pro Tunc found that respondent overpaid TTD in the sum of \$21,453.99. The SALJ

²¹ The parties stipulated to an average weekly wage of \$645.51, which yields a compensation rate of \$430.36.

also found an underpayment of TTD, based on the agreed average weekly wage and compensation rate, totaling \$532.66.

The Board finds that the SALJ's findings should be modified concerning TTD. The correct compensation rate for all the weeks of TTD to which claimant is entitled is, as found by the SALJ, \$430.36. However, claimant was not released by Dr. Cusick at maximum medical improvement for his right hip until January 19, 2010.²² Claimant is entitled to TTD from May 12, 2006, through January 19, 2010, or 192.71 weeks, at the rate of \$430.36 per week, totaling \$82,934.68.

CONCLUSIONS

The Board finds and concludes as follows:

(1) Claimant sustained a 20% whole body functional impairment as a result of his right hip injury he sustained on May 12, 2006. Claimant is not permanently and totally disabled. Claimant is entitled to permanent partial disability benefits for a 50% work disability based on a 100% wage loss and no task loss.

(2) Claimant's back injury on May 26, 2009, was not the natural and probable consequence of the May 12, 2006, accidental injury. Rather, the May 26, 2009, injury was caused by a separate and intervening accident having no connection to the May 12, 2006, hip injury.

(3) Claimant is entitled to temporary total disability benefits from May 12, 2006, through January 19, 2010, or 192.71 weeks, at the rate of \$430.36 per week, totaling \$82,934.68. Respondent reports paying temporary total disability benefits totaling \$83,916.44, resulting in an overpayment of \$981.76, which is incorporated in the computations below.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.²³ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board affirms in part and modifies in part the September 15, 2011, Award and September 22, 2011, Order Nunc Pro Tunc entered by SALJ Nodgaard.

²² Cusick Depo., Ex. 2.

²³ K.S.A. 2010 Supp. 44-555c(k).

William A. Roberson is granted compensation from Coast to Coast Drywall, Inc., and its insurance carrier for a May 12, 2006, accident and resulting disability. Based upon an average weekly wage of \$645.51, Mr. Roberson is entitled to receive 192.71 weeks of temporary total disability benefits at \$430.36 per week, or \$82,934.68, plus 39.65 weeks of permanent partial general disability benefits at \$430.36 per week, or \$17,065.32, for a 50% permanent partial general disability, making a total award of \$100,000, which is all due and owing less any amounts previously paid.

The Board adopts the remaining findings set forth in the Award and Order Nunc Pro Tunc to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of March, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale Slape, Attorney for Claimant
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
John C. Nodgaard, Special Administrative Law Judge